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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

ADR

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ALMA CLARISA HERNANDEZ,

Plaintiff,

vs.

THE SUPREME MASTERS CHING
HAI INTERNATIONAL
ASSOCIATION VEGETARIAN
HOUSE, INC. dba VEGETARIAN
HOUSE, JOHN R. CHACE,

Defendants.

Plaintiff's Complaint

I. SUMMARY

1. This is a civil rights action by plaintiff ALMA CLARISA HERNANDEZ ("Hernandez") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Vegetarian House
520 E. Santa Clara St.
Santa Jose, CA 95112
(hereinafter "the Restaurant")

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Plaintiff's Complaint

1
2 2. HERNANDEZ seeks damages, injunctive and declaratory relief, attorney
3 fees and costs, against THE SUPREME MASTER CHING HAI
4 INTERNATIONAL ASSOCIATION VEGETARIAN HOUSE, INC., dba
5 VEGETARIAN HOUSE and JOHN R. CHACE (hereinafter referred to
6 collectively as Defendants), owners and operators of Vegetarian House
7 ("Restaurant"), pursuant to the Americans with Disabilities Act of 1990, (42
8 U.S.C. §§ 12101 et seq.) and related California statutes.

9 II. JURISDICTION

10 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and
11 1343 for ADA claims.

12 4. Supplemental jurisdiction for claims brought under parallel
13 California law – arising from the same nucleus of operative facts – is predicated
14 on 28 U.S.C. § 1367.

15 5. Hernandez's claims are authorized by 28 U.S.C. §§ 2201 and
16 2202.

17 III. VENUE

18 6. All actions complained of herein take place within the jurisdiction
19 of the United States District Court, Northern District of California, and venue is
20 invoked pursuant to 28 U.S.C. § 1391(b),(c).

21 IV. PARTIES

22 7. Defendants own, operate, and/or lease the Restaurant, and consist
23 of a person (or persons), firm, and/or corporation.

24 8. Hernandez was diagnosed with severe scoliosis and was confined
25 in a wheelchair for over 15 years. Consequently, Hernandez is "physically
26 disabled," as defined by all applicable California and United States laws, and a
27 member of the public whose rights are protected by these laws.

28 V. FACTS

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1 9. The Restaurant is a public accommodation facility serving food
2 and drink, open to the public, which is intended for nonresidential use and
3 whose operation affects commerce.

4 10. Hernandez visited the Restaurant and encountered barriers (both
5 physical and intangible) that interfered with – if not outright denied – her ability
6 to use and enjoy the goods, services, privileges, and accommodations offered at
7 the facility. To the extent known by Hernandez, the barriers at the Restaurant
8 included, but are not limited to, the following:

9 A. Parking:

- 10 1) A warning sign regarding the penalty for unauthorized use of designated
11 disabled parking spaces is not posted conspicuously at EACH entrance to
12 the off-street parking facilities;
- 13 2) Each warning sign does not state: “UNAUTHORIZED VEHICLES
14 PARKED IN DESIGNATED ACCESSIBLE SPACES NOT
15 DISPLAYING DISTINGUISHING PLACARDS OR SPECIAL LICENSE
16 PLATES ISSUED FOR PERSONS WITH DISABILITIES WILL BE
17 TOWED AWAY AT OWNER’S EXPENSE. TOWED VEHICLES MAY
18 BE RECLAIMED AT (Address) OR BY TELEPHONING (Phone
19 Number);
- 20 3) The correct number of standard accessible and van-accessible parking
21 stalls is not provided on the site;
- 22 4) Parking spaces are not located on the shortest accessible route of travel
23 from adjacent parking to the accessible entrance;
- 24 5) Each parking space reserved for persons with disabilities is not identified
25 by a reflectorized sign permanently posted immediately adjacent to and
26 visible from each stall or space, consisting of a profile view of the
27 International Symbol of Accessibility in white on a dark blue background;

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- 1 6) There is no van-accessible parking space provided;
- 2 7) There are no additional signs "Minimum Fine \$250.00" provided;
- 3 8) The surface of each accessible parking pace does not have a surface
4 identification duplicating either of the following schemes:
 - 5 a. By outlining or painting the stall or space in blue and outlining on
6 the ground in the stall or space in white or suitable contrasting color
7 a profile view depicting a wheelchair with occupant;
 - 8 b. By outlining a profile view of a wheelchair with occupant in white
9 on blue background. The profile view shall be located so that it is
10 visible to a traffic enforcement officer when a vehicle is properly
11 parked in the space and shall be 36" high by 36" wide;
- 12 9) There is no accessible route provided within the boundary of the site to an
13 accessible building entrances from:
 - 14 a. Public transportation stops;
 - 15 b. Accessible parking spaces;
 - 16 c. Accessible passenger loading zones;
 - 17 d. Public streets and sidewalks.
- 18 10) Signage containing the International Symbol of Accessibility is not
19 located at the primary public entrance;
- 20 11) The only public entrance provided does not have a level landing
21 provided;
- 22 12) Single accommodation toilet does not provide one accessible water
23 closet and one accessible lavatory;
- 24 13) Doors swing into the clear floor space required for lavatory/water
25 closet;
- 26 14) Doors, fixtures and controls are not located on an accessible route;

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- 1 15) The entrance door to a single accommodation toilet room does not
- 2 contain a privacy latch (push button-lever release recommended);
- 3 16) The minimum clear width of the accessible route is less than 36";
- 4 17) The entrance door to the only stall provided is not accessible;
- 5 18) Floor mats and doormats are not adequately anchored to prevent
- 6 interference with wheelchair traffic;
- 7 19) Handles, pulls latches, locks and other operating devices on
- 8 accessible doors shall have a shape that is easy to grasp with one hand and
- 9 does not require tight grasping, tight pinching or twisting of the wrist to
- 10 operate;
- 11 20) Door closers are not provided;
- 12 21) Sufficient space for a wheelchair measuring 30" wide x 48" long to
- 13 enter the single-accommodation restroom and permit the door to close is
- 14 not provided;
- 15 22) A clear space of sufficient size to inscribe a 60" diameter circle, or a
- 16 T-shaped clear space is not provided within the sanitary facility room;
- 17 23) The door encroaches more than 12" into the required clear space;
- 18 24) A minimum 60" wide and 48" deep clear floor space is not provided
- 19 in front of the water closet;
- 20 25) The top of the toilet seat is less than 17"-19" from floor surface
- 21 measured to the top of a maximum 2" high toilet seat;
- 22 26) The flush valve is on the narrow side of the toilet area;
- 23 27) Grab bars within the accessible compartment are not provided on the
- 24 side wall closest to the water closet and on the rear wall;
- 25 28) The side grab bar is less than 42" in length;
- 26 29) The front end of the side grab bar is not positioned a minimum of
- 27 24" in front of the water closet;

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- 1 30) The front end of the side grab bar is not located a minimum of 54"
2 from the rear wall;
- 3 31) The side grab bar is not securely attached and is not mounted at 33"
4 to the center of the bar above and parallel to the floor;
- 5 32) No rear grab bar is provided;
- 6 33) The toilet paper dispenser is mounted less than a minimum height of
7 19" from the floor to the centerline of the dispenser;
- 8 34) The toilet paper dispenser is mounted more than a maximum
9 distance of 36" from the rear wall to the front of the dispenser;
- 10 35) There no minimum 30"x48" clear space provided in front of the
11 lavatory for forward approach;
- 12 36) Drain and hot water piping is not insulated or configured to prevent
13 contact;
- 14 37) There are sharp and abrasive elements under lavatory;
- 15 38) Operable part of the toilet seat dispenser is located over 40" above
16 floor;
- 17 39) Coat hook is not located within the appropriate reach ranges;
- 18 40) Sanitary facilities are not displaying signs in a minimum of two
19 locations; one type located on the doorway to the facility, and another type
20 mounted on the wall adjacent to the latch side of the door.
- 21 41) The International Symbol of Accessibility is not posted at accessible
22 sanitary facilities;
- 23 42) The restroom identification signage is not located on the wall
24 adjacent to the latch side of the door;
- 25 43) The stall door is not equipped with an automatic closing device;
- 26 44) The inside and outside of the compartment door is not equipped with
27 a loop or U-shaped handle located immediately below the latch;

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- 1 45) There is no accessible seating provided at the bar;
2 46) There is no accessible cashier/hostess stand provided;
3 47) There is no accessible seating provided in the restaurant.

4 These barriers prevented Hernandez from enjoying full and equal access.

5 11. Hernandez was also deterred from visiting the Restaurant because
6 she became aware that the Restaurants goods, services, facilities, privileges,
7 advantages, and accommodations were unavailable to physically disabled
8 patrons (such as herself). She continues to be deterred from visiting the
9 Restaurant because of the future threats of injury created by these barriers.

10 12. Hernandez also encountered barriers at the Restaurant, which
11 violate state and federal law, but were unrelated to her disability. Nothing
12 within this complaint, however, should be construed as an allegation that
13 Hernandez is seeking to remove barriers unrelated to her disability.

14 13. Defendants knew that these elements and areas of the Restaurant
15 were inaccessible, violate state and federal law, and interfere with (or deny)
16 access to the physically disabled. Moreover, Defendants have the financial
17 resources to remove these barriers from the Restaurant (without much difficulty
18 or expense), and make the Restaurant accessible to the physically disabled. To
19 date, however, Defendants refuse to either remove those barriers or seek an
20 unreasonable hardship exemption to excuse non-compliance.

21 14. At all relevant times, Defendants have possessed and enjoyed
22 sufficient control and authority to modify the Restaurant to remove
23 impediments to wheelchair access and to comply with the Americans with
24 Disabilities Act Accessibility Guidelines and Title 24 regulations. Defendants
25 have not removed such impediments and have not modified the Restaurant to
26 conform to accessibility standards. Defendants have intentionally maintained

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the Restaurant and in its current condition and has intentionally refrained from altering the Restaurant so that it complies with the accessibility standards.

15. Hernandez further alleges that the (continued) presence of barriers at the restaurant is so obvious as to establish Defendants discriminatory intent.¹ On information and belief, Hernandez avers that evidence of this discriminatory intent includes Defendants' refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Restaurant; conscientious decision to the architectural layout (as it currently exists) at the Restaurant; decision not to remove barriers from the Restaurant; and allowance that Defendants' property continues to exist in its non-compliance state. Hernandez further alleges, on information and belief, that the Restaurant is not in the midst of a remodel, and that the barriers present at the Restaurant are not isolated (or temporary) interruptions in access due to maintenance or repairs.²

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. Hernandez incorporates the allegations contained in paragraphs 1 through 15 for this claim.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Defendants discriminated against Hernandez by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges and

¹ E.g., Gunther v. Lin, 144 Cal.App.4th 223, fn.6

² Id.; 28 C.F.R. § 36.211(b)

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1 accommodations of the Restaurant during each visit and each incident of
2 deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 19. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” *Id.* § 12181(9).

9 20. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 21. Here, Hernandez alleges that Defendants can easily remove the
14 architectural barriers at Restaurant without much difficulty or expense, and that
15 Defendants violated the ADA by failing to remove those barriers, when it was
16 readily achievable to do so.

17 22. In the alternative, if it was not “readily achievable” for Defendants
18 to remove the Restaurant’s barriers, then Defendants violated the ADA by
19 failing to make the required services available through alternative methods,
20 which are readily achievable.

21 Failure to Design and Construct and Accessible Facility

22 23. On information and belief, the Restaurant was designed and
23 constructed (or both) after January 26, 1992 – independently triggering access
24 requirements under Title III or the ADA.

25 24. The ADA also prohibits designing and constructing facilities or
26 first occupancy after January 16, 1993, that aren’t readily accessible to, and
27

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1 usable by, individuals with disabilities when it was structurally practicable to do
2 so. 42 U.S.C. § 12183(a)(1).

3 25. Here, Defendants violated the ADA by designing and constructing
4 (or both) the Restaurant in a manner that was not readily accessible to the
5 physically disabled public – including Hernandez – when it was structurally
6 practical to do so.³

7 Failure to Make an Altered Facility Accessible

8 26. On information and belief, the Restaurant was modified after
9 January 26, 1992, independently triggering access requirements under the
10 ADA.

11 27. The ADA also requires that facilities altered in a manner that
12 affects (or could affect) its usability must be made readily accessible to
13 individuals with disabilities to the maximum extent feasible. 42 U.S.C. §
14 12183(a)(2). Altering an area that contains a facility's primary function also
15 requires adding making the paths of travel, bathrooms, telephones, and drinking
16 fountains serving that area accessible to the maximum extent feasible. *Id.*

17 28. Here, Defendants altered the Restaurant in a manner that violated
18 the ADA and was not readily accessible to the physically disabled public –
19 including Hernandez – to the maximum extent feasible.

20 Failure to Modify Existing Policies and Procedures

21 29. The ADA also requires reasonable modifications in policies,
22 practices, or procedures, when necessary to afford such goods, services,
23 facilities, or accommodations to individuals with disabilities, unless the entity
24 can demonstrate that making such modifications would fundamentally alter
25 their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

26
27 ³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing
28 this action as a private attorney general under either state or federal statutes.

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1 therefore, infringed upon or violated (or both) Hernandez's rights under the
2 Disabled Persons Act.

3 38. For each offense of the Disabled Persons Act, Hernandez seeks
4 actual damages (both general and special damages), statutory minimum
5 damages of one thousand dollars (\$1,000), declaratory relief, and any other
6 remedy available under California Civil Code § 54.3.

7 39. She also seeks to enjoin Defendants from violating the Disabled
8 Persons Act (and ADA) under California Civil Code § 55, and to recover
9 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and
10 55.

11 VIII. THIRD CLAIM

12 Unruh Civil Rights Act

13 40. Hernandez incorporates the allegations contained in paragraphs 1
14 through 30 for this claim.

15 41. California Civil Code § 51 states, in part, that; All persons within
16 the jurisdiction of this state are entitled to the full and equal accommodations,
17 advantages, facilities, privileges, or services in all business establishments of
18 every kind whatsoever.

19 42. California Civil Code § 51.5 also states, in part that: No business
20 establishment of any kind whatsoever shall discriminate against any person in
21 this state because of the disability of the person.

22 43. California Civil Code § 51(f) specifically incorporates (by
23 reference) an individual's rights under the ADA into the Unruh Act.

24 44. Defendants aforementioned acts and omissions denied the
25 physically disabled public – including Hernandez – full and equal
26 accommodations, advantages, facilities, privileges and services in a business
27 establishment (because of their physical disability).

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X. PRAYER FOR RELIEF

WHEREFORE, Hernandez prays judgment against Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expense, and costs of suit.⁴
5. Interest at the legal rate from the date of the filing of this action.

Dated: May 11, 2010


K. Randolph Moore
Attorney for Plaintiff

⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.